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CITY AND COUNTY OF SAN FRANCISCO, ET AL.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ESTHER HWANG,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, ET AL.

Defendants.

Case No. C07-02718 MMC

**DEFENDANTS' MOTION TO STRIKE
PLAINTIFF'S UNAUTHORIZED SUR-
REPLY TO OBJECTIONS TO
EVIDENCE; ALTERNATIVELY,
DEFENDANTS' REQUEST FOR
LEAVE TO FILE RESPONSE TO
PLAINTIFF'S UNAUTHORIZED
FILING**

Hearing Date: Sept. 12, 2008
Time: 9:00 AM
Place: No. 7

Trial Date: Oct. 27. 2008

INTRODUCTION

On July 25, 2008 defendants filed their motion for partial summary judgment. On August 22, 2008, plaintiff filed her opposition. On August 29, 2008, defendants timely filed their reply, objections to plaintiff's evidence, and an administrative motion requesting leave to file a declaration under seal. Pursuant to local rule 7-3(d) no other papers were to be filed.

1 However, on September 5, 2008, plaintiff filed an unauthorized surreply (misleadingly
2 entitled titled "opposition") to defendants' objections to evidence. Plaintiff did not seek leave
3 of the court as required by local rule. Furthermore, plaintiff's "opposition" is a wholesale
4 attempt to argue the objections and insert other improper arguments in the long frowned
5 upon tradition of an unauthorized "surreply."

6 Because plaintiff's "opposition" is improper, because it is a misleading attempt to
7 reargue issues raised in the initial opposition, and because plaintiff failed to seek the court's
8 permission first, it should be stricken. Alternatively, defendants request leave of the court to
9 file a response to the filing.
10

11 ARGUMENT

12 Plaintiff's Second "Opposition" (or Surreply) Was Unauthorized 13 and Therefore Should Be Stricken.

14 The Northern District Civil Local Rules permit the parties to a motion to file *only* an
15 opposition (by the non-moving party), a reply (by the moving party) and, if applicable, a
16 notice of recent judicial decisions decided after the opposition or reply were filed. See Civil
17 Local Rule 7-3. "Otherwise, once a reply is filed, ***no additional memoranda, papers or***
18 ***letters may be filed without prior Court approval.***" (Civ. L.R. 7-3(d) [emphasis added].)
19 The Court has authority to strike any pleading that is filed without leave of court in violation
20 of its rules.

21 This very Court has discouraged exactly the same tactic used here by plaintiff in the
22 past. In *Powell v. Fidelity National*, 2003 WL 22134854 (N.D. Cal. 2003)(MMC), plaintiff
23 submitted a "Request to File Objection and Objection" to defendants' reply brief. Civil Local
24 Rule 7-3(d) provides that "once a reply is filed, no additional memoranda, papers or letters
25 may be filed without prior court approval." Civ. L.R. 7-3(d). The Honorable Judge Chesney
26 found plaintiff's "Objection" to be "unhelpful and unnecessary" (page 3), denied Powell's
27 request that it be filed, and ordered that the unauthorized pleading be "STRICKEN from the
28

The Local Rules provide for three briefs: an initial brief, a response to that brief, and a reply brief [citations omitted]. They do not provide for the filing of a response to a reply brief. [citations omitted]. And it is within the district court's discretion to strike an unauthorized filing. [citations omitted]. The plaintiffs claim that the district court abused its discretion because the "response to the reply brief" was a filing necessary to respond to new issues the defendants raised in their reply briefs. If that was the case, however, the proper response was a motion to strike the offending portions of the reply brief or to seek leave to file a response to the reply brief. [citations omitted]. The plaintiffs followed neither course. Under these circumstances, it was not an abuse of discretion to strike the unauthorized filings. *Id.*

Plaintiff's tactic is clearly unauthorized and discouraged. Her "opposition to objections" should be stricken, or in the alternative, defendants should be given leave to respond.

Dated: September 5, 2008

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By: _____
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